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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,066	02/22/2002	Kalliope Christophides-Lordi	05725.1030-00	8578

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE

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10/008066

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT

PAPER NUMBER

9/5/04

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8/24/04☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-36 is/are pending in the application.Of the above, claim(s) 18-21, 23, 27, 28, 31-35 is/are withdrawn from consideration.☐ Claim(s) _____ is/are allowed.☒ Claim(s) 1-17, 22, 24-26, 29, 30, 36 is/are rejected.☐ Claim(s) _____ is/are objected to.☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been☐ received.☐ received in Application No. (Series Code/Serial Number) _____.☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2/22/02☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 1617

Applicant's election with traverse of a method of modifying the appearance of a substrate, fillers, and salicylic acid derivatives in the reply filed on 8/24/04 is acknowledged. The traversal is on the ground(s) that no serious burden has been shown. This is not found persuasive because no burden need be shown. Applicants can simply overcome the requirement by stating on the record that the species are equivalent. However, then, a rejection over one species shall apply to all.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 22, 24, 29-30, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Stewart.

Stewart teaches application of a composition applied to the skin and lips (abstract). An enhanced appearance is disclosed (column 3 line 31). 2-4% tricontanyl PVP is specified (column 8 lines 7-8). Example 1 is an oil-in water emulsion. Octyl ^a slicylate is specified (column 4 line 32). A filler is disclosed (column 6 line). As to the [^] claimed molecular weight, Stewart uses the same polymer of commerce (WP-660 ^{disclose (page 12 paragraph} column 6 line 38) that applicants 46). The claimed cooling effect must be possessed by [^] the anticipatory composition because it is the same as that claimed.

Art Unit: 1617

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-17, 25-26, 29-30, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder et al.


Snyder et al teaches a composition for coloring eyelashes (title). A pigment containing oil-in water emulsion is specified (abstract). PVP/triacontene (column 4 lines 64-69) is disclosed at 0.1-15% (column 4 line 38). Ganex WP 660 is specified (column 5 line 8). 5-45% waxes are disclosed (column 4 line 38). The statements regarding molecular weight and cooling effect in the previous 102 is incorporated herein.

No claims allowed.

Any inquiry concerning this communication should be directed to Edward J. Webman at telephone number 571-272-0633.

Webman/tgd

September 9, 2004



EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500